IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.19491 OF 2007

Dharmamurthi Rao Bahadur Calavala
Cunnan Chetty's Hindu Higher Secondary School,
Thiruvallur, Thiruvallur District,
rep.by its. Honorary Correspondent & Secretary
of the School Committee Sri C.Venkatachalam ...Petitioner

Vs.

1.The Joint Director of School Education,
(Higher Secondary) and Appellate Authority
Chennai 600 006.
2. The Chief Educational officer, Thiruvallur
3. Thiru T.R.Perumal
PG Assistant
Dharmamurthy Rao Bahadur Calavala
Cunnan Chetty's Hindu Higher Secondary School
Thiruvallur, Thiruvallur District. ...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus order to the 1st respondent calling for the records concerning D.Dis.101229/W5/3/2005 dated 20.4.2007 issued by the 1st respondent and quash the same and consequently direct to forbear the respondents from implementing the orders of the 1st respondent till the disposal of Writ Petition as stated within.

For Petitioner: Mr.R.S.Jeevarathnam
For Respondents 1 and 2: Mr.Shanmugamathi Sekar
For Respondent 3: Mr.N.Kolandaivelu

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O R D E R

Challenge is made to the order of the first respondent calling for the records concerning D.Dis.101229/W5/3/2005 dated 20.4.2007 issued by the first respondent and to quash the same and consequently forbear the respondents from implementing the orders of the first respondent till the disposal of the writ petition.

2. Affidavit filed in support of the petition is perused.

3. The Court heard the learned counsel on either side.

4. Admittedly, the Dharmamurthy Rao Bahadur Calavala

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Cunnan Chetty Charities Trust was established in the year 1920 which is a public trust and the object of the trust is to establish Educational Institutions. One among them is petitioner's school at Thiruvallur and it is administered by the Trust and it was started on 21.06.1917. During 1949-50 it became a High School and in the year 1978-79, the school was upgraded as Higher Secondary School. The school enjoys permanent recognition and also receiving Aid from the Government of Tamil Nadu.

5. On the retirement of one Mr.M.Ponnu Pillai, then Headmaster of the School on 21.8.2005, a circular was issued from the management inviting applications from the P.G.Assistants who are willing to become Headmaster of the Institution. In response to the circular, seven Post Graduate Assistants submitted their applications and out of which, the 3rd respondent and one Mr.Ravindran were also included. After scrutinizing the list, six qualified candidates were called upon to appear before the School Committee on 1.8.2005. The school committee which has 12 members, out of which 11 sat in the interview and has selected one Mr.Ravindran, Sl.No.4 for the post of Headmaster and the appointment order was issued in his favour by the Management on 4.8.2005. Accordingly, the said Ravindran assumed charge as Headmaster of the petitioner's School on 31.8.2005.

6. While the matter stood thus, the third respondent preferred an appeal to the first respondent on 26.9.2005 and the matter was kept pending for nearly eighteen months and the impugned order came to be passed on 20.4.2007 allowing the appeal preferred by the third respondent stating that his merit and ability were found to be approximately equal and as such his appeal to promote him as Headmaster based on his seniority is being allowed and orders were also issued. Under such circumstances, the petitioner has brought forth this writ petition before this Court.

7. Advancing his arguments on behalf of the petitioner, learned counsel would submit that in the instant case, the petitioner's school is receiving aid from the Government of Tamil Nadu,that in order to fill up the post of Headmaster from the Post Graduate Assistants and accordingly six persons including one Ravindran who was appointed for the post of Headmaster and the third respondent herein were called for an interview and they were also appeared in the interview. The committee which has 12 members out of which 11 were sat in the interview has selected one Mr.Ravindran, Sl.No.4 for the post of Headmaster and the appointment order was issued in his favour by the Management on 4.8.2005, pursuant to which he has also assumed charge on 31.8.2005. The impugned order came to be passed on an appeal preferred by the third respondent after a period of eighteen months. The only reason that was adduced by the authority was that the merit and ability of the third respondent and the said

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Ravindran are approximately equal and also the third respondent has got seniority than the other candidate Ravindran and hence the appointment order of the third respondent has to be cancelled.

8. Learned counsel for the petitioner would further submit that the appeal was allowed stating that the merit and ability of the third respondent are found approximately equal with the said Ravindran as per the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. It is true that the competent authority i.e. the school committee who is supreme authority has to decide the question of merit and ability , and at the time of interview, out of 12 members, 11 members sat in the interview found that the said Ravindran who is a person with ability and once they selected the candidate who is better than others, the seniority has no role to play. When the particulars were called for by the first respondent to show his merit and ability, necessary documents were filed by the management. But, it was not considered by the authority and once the selection has been made in accordance with the rules by the school committee, the authority cannot found that some other candidate is senior to the said Ravindran and his merit and ability are approximately equal. Under such circumstances, the order impugned has got to be quashed.

9. In answer to the above, learned counsel for the respondent department would submit that in the instant case, it is true that the school committee conducted interview and it has also selected Mr.Ravindran , but it was not final. Accordingly, challenge was made by the third respondent, who was also participated in the said interview. The authority has perused the documents and found that the third respondent was found approximately equal to Mr.Ravindran who was selected by the School committee. But, at the same time, the third respondent is senior to the said Ravindran. Under such circumstances, the committee should have been appointed the third respondent, but it did not done so. Hence, the question of cancellation of the said order would not arise and hence the writ petition has got to be dismissed.

10. Learned counsel for the third respondent would submit that the third respondent was working as Post Graduate Assistant (Maths) in the first respondent school and number of students appeared for the Maths subject and the Maths subject is a difficult subject, while the said Ravindran is taking class for Economics and Commerce and the number of students are less and the above subjects are not difficult one. Apart from that, at the time of interview, merit and ability of the third respondent was found approximately equal but the school committee did not notice the same and hence the selection of the said Ravindran was not correct. Under such circumstances, challenge was made by the third respondent before the Joint Director of School Education, the first respondent herein by way of appeal and the appeal was also allowed.

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While disposing of the appeal, the first respondent wanted certain particulars from the management and the said particulars were also submitted by the petitioner School on 11.9.2006. A reading of the order under challenge would clearly reveal that in the case of third respondent and Ravindran, the merit and ability were approximately equal and it is also pertinent to note that the third respondent is senior to the said Ravindran and hence the first respondent has taken a correct view and the selection made by the school committee was not proper . Thus, the first respondent who is vested with power has rightly set aside the appointment of the said Ravindran and hence the appointment of the third respondent was also directed to be made. Under such circumstances, the writ petition does not merit consideration and it has got to be dismissed.

11. The Court paid its anxious consideration on the submissions made.

12. It is not in controversy that interview was conducted by the school committee on 1.8.2005 wherein six candidates were called for interview and all those six candidates were PG Assistants. The committee consists of 12 members out of which 11 members sat in the interview and selected one Mr.Ravindran and appointment order was also given to him on 4.8.2005 and he also assumed charge as Headmaster on 31.8.2005. The third respondent who was also a candidate of PG Assistant and who has also appeared for interview, aggrieved over the same has preferred an appeal before the first respondent and the first respondent allowed the appeal, whereby the appointment of the said Ravindran was set aside and a direction was given to the management to give appointment to the third respondent as Headmaster. From the report of the school committee, it could be seen that after discussing the issue at length and after making an objective assessment and proper application of mind, the school committee found that Mr.Ravindran, Sl.No.4, PG Assistant in Commerce is more suitable for the post of Headmaster of Thiruvallur School on selection basis. From a reading of his appointment order, it could quite clear that there was an objective assessment and also proper application of mind. It is pertinent to point out that the question of seniority could be considered as per Rule 15(4)(i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 (hereinafter referred to as the Rules), if the merit and ability are found to be approximately equal. In the instant case,the School committee consists of 12 members conducted an interview. It is not in controversy the Committee has also given a report stating that it has got satisfaction and thus in the instant case, the merit and ability of the respective candidates have been taken into consideration. If they are approximately equal, only then, seniority must have a role to play. In the instant case,the main contention of the third respondent is that he is senior than the

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said Ravindran and which is not in dispute. While considering the merit and ability, the the appellate authority failed to consider that Thiru Ravindran was able to secure 99% of the results in the subject handled by him and secured 100% results twice while comparing the third respondent who was able to secure only 95% in his subject with more number of failures in the subject handled by him. It is not the case of the third respondent that the management has got any ulterior motive to appoint the said Ravindran by rejecting the case of the third respondent. Needless to say that the management will have more concern than others with the Institution. Once the school committee consists of 12 members out of which 11 sat in the interview, were of the same opinion that the said Ravindran has got better merit and ability on the objective assessment of the available materials on record, it is not correct to state that seniority is the main criteria. Though, the merit and ability of both the candidates are approximately equal, in the instant case, the contention put forth by the third respondent that taking Maths class is very difficult, cannot be countenanced. In the instant case, the management has rightly done so. In the instant case, though the documents were called for and all the particulars were furnished by the petitioner's school, but the first respondent has taken a view, which is not consistent with Rule 15(4)(i) of the Rules . All the more, it could be seen that what was registered in the mind of the authority was that the third respondent was senior in service and therefore that has to be prevailed over to him. Hence, the authority was of the view that the appointment order should have been given to the third respondent than the said Ravindran. But, it is pertinent to point out that strict compliance of Rule 15(4)(i) of the Rules is that if the merit and ability of two candidates are approximately equal, then seniority has to be taken into account. In the instant case, when a school committee has got jurisdiction to found that the said Ravindran was more competent person to appoint as Headmaster among all the six candidates , there is no question of considering the case of the third respondent, would arise. Hence this Court is unable to notice any reason to sustain the order of the first respondent and hence it has got to be set aside and accordingly set aside and the order of the first respondent is quashed.

13. The writ petition is allowed. No costs. Consequently, connected M.Ps. are closed.

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Asst.Registrar

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Sub Asst.Registrar

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To

1.The Joint Director of School Education,
(Higher Secondary) and Appellate Authority
Chennai 600 006.

2.The Chief Educational officer, Thiruvallur

one cc to Mr.R.S.Jeevarathinam, advocate SR.No.73089

one cc to Mr.N.Kolandaivelu, advocate SR.No.73173

one cc to the Government Pleader SR.No.73302

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